Supreme Court, U.S.
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No. 98-1236

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

COMPANIA FINANCIERA ECUATORIANA
DE DESAROLLO, S.A.,

Petitioner,

vs.

THE CHASE MANHATTAN BANK, successor in interest
to Manufacturers Hanover Trust Company,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Is there a compelling reason for this Court to review the four-page contract for the sale and purchase of Republic of Ecuador debt which clearly and unequivocally establishes that Petitioner conveyed the loans with all accrued and unpaid interest?

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Chase Manhattan Corporation is the parent of The Chase Manhattan Bank. Nonwholly owned subsidiaries of Respondent include:

AMC Holding Corp.

Chase Automated Clearing House, Inc.

Conolog Corporation

HCX, Inc.

TABLE OF CONTENTS

	Page
Question Presented	i
Rule 29.6 Corporate Disclosure Statement	ii
Table of Contents	iii
Table of Cited Authorities	iv
Table of Appendices	v
Statement of the Case	1
A. Factual Background	2
B. Procedural Background	3
Reasons for Denying the Writ	4
I. The Date July 31, 1990 Has No Significance With Respect To The Assignment Of The Unpaid Interest	5
II. There Is No Ambiguity In The Agreement	8
Conclusion	10

TABLE OF CITED AUTHORITIES

Page

Cases:

Hunt Ltd. v. Lifschultz Fast Freight, Inc., 889 F.2d 1274 (2d Cir. 1989) 4

In re Wallace, 86 N.Y.2d 543, 658 N.E.2d 715, 634 N.Y.S.2d 669 (1995) 7

Metropolitan Life Ins. Co. v. RJR Nabisco, Inc., 906 F.2d 884 (2d Cir. 1990) 4, 9

Seiden Assoc., Inc. v. ANC Holdings, Inc., 959 F.2d 425 (2d Cir. 1992) 9

TABLE OF APPENDICES

Page

Appendix A — Affidavit Of Robert J. Salvador With Exhibits Dated September 25, 1997 ..... 1a

STATEMENT OF THE CASE

This case involves a simple contract between Manufacturers Hanover Trust Company, a predecessor-in-interest of The Chase Manhattan Bank (hereinafter "MHT"), and Compania Financiera Ecuatoriana De Desarollo, S.A. ("COFIEC") for the sale of The Republic of Ecuador ("Ecuador") debt in the face amount of $6,270,000 ("the Agreement"). At the time the contract was entered into in October 1990, Ecuador was in default of its obligations under the loan agreements and was not making interest payments.

In 1995, Ecuador brought its interest obligations up-to-date. COFIEC brought this action for breach of contract, conversion, unjust enrichment and constructive trust seeking the portion of the interest payments that were allocated to the period preceding July 31, 1990. It is COFIEC's entitlement to these interest payments that is at issue.

In the District Court, on MHT's motion to dismiss the complaint for failure to state a claim, Judge John G. Koeltl ruled that the Agreement was clear and unequivocal and that, pursuant to that contract, COFIEC had conveyed the right to all interest payments to MHT. Accordingly, Judge Koeltl dismissed the complaint. The Second Circuit summarily affirmed Judge Koeltl's ruling substantially for the reasons set forth in the District Court's opinion.

There is no reason for this Court to exercise its discretion to grant a Writ of Certiorari in order to review this simple four-page contract yet again.

A. Factual Background

On or about October 15, 1990, COFIEC and MHT executed the Agreement pursuant to which COFIEC agreed to sell, and MHT agreed to purchase, Ecuador debt in four tranches in the face amount of $6,270,000 (the "Obligations" or the "Loans").

At the time, Ecuador was not making timely interest payments. The parties agreed, however, that all such payments — whenever made — would be credited to MHT's account:

> Each of the ASSIGNOR [COFIEC] and the ASSIGNEE [MHT] agrees that *interest* on the principal amounts of the Assigned Loans *which accrues prior to the Effective Date [October 15, 1990]* and interest thereon which accrues on or after the Effective Date *shall also be for the account of the ASSIGNEE* and payments and prepayments of the principal amounts of the Assigned Loans payable on or after the effective date shall be for the account of the ASSIGNEE.

(Emphasis added) (Agreement, ¶5(a), A. 7a).

COFIEC's agreement to convey all accrued but unpaid interest to MHT was further confirmed in a four-page exhibit to the Agreement which provides in capital letters and underscored in the section identifying the amount of the assigned loan:

TOTAL AMOUNT ASSIGNED [$6,270,000] PLUS ALL ACCRUED BUT UNPAID INTEREST ON THE FOREGOING PRINCIPAL

(Emphasis in original) (Exhibit A, A. 10a-13a).

These are the only provisions in the Agreement that define the parties' substantive rights with respect to the unpaid interest. The only other provision of the Agreement that alludes to interest payments, paragraph 5(b), describes the parties' responsibilities in the event that a party receives a payment of interest or principal which is for the account of the other. (Agreement, ¶5(b), A. 7a-8a).

In August 1995, almost five years after the Agreement was executed, Ecuador brought its interest payments on the Obligations up-to-date. (Comp., ¶16).

B. Procedural Background

In April 1997, COFIEC commenced this action against MHT, attaching to its complaint a draft of the Agreement which was not fully executed and was not signed by MHT. (A. 6). That draft did not contain the language in Exhibit A which confirms in clear and unequivocal language that COFIEC assigned the Loans to MHT with "*ALL ACCRUED BUT UNPAID INTEREST.*" (A. 10a-13a).[1]

MHT attached the fully executed Agreement signed by COFIEC's president to its motion to dismiss. (A. 1a-13a).

---

1. In its appendix to this Petition, COFIEC again attaches the draft Exhibit A. This time, however, it is appended to a **signed** copy of the Agreement. We trust that this was only an oversight.

At the oral argument before Judge Koeltl, COFIEC agreed that the Court could consider the documents proffered by MHT as the final version of the contract between the parties, including Exhibit A. (A. 6). Judge Koeltl dismissed the Complaint by order dated February 19, 1998. The Court of Appeals for the Second Circuit summarily affirmed the District Court's order on November 2, 1998.

REASONS FOR DENYING THE WRIT

Petitioner's claim that the District Court and the Second Circuit misconstrued the Agreement does not warrant consideration by this Court. The decision below was plainly correct and there is no compelling reason for this Court's review.

One of the basic tenets of contract law is that language whose meaning is otherwise plain does not become ambiguous merely because the parties urge conflicting interpretations of their agreement. *Hunt Ltd. v. Lifschultz Fast Freight, Inc.*, 889 F.2d 1274, 1277 (2d Cir. 1989); *Metropolitan Life Ins. Co. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990). Where the interpretation urged by one party strains the contract language beyond "its reasonable and ordinary" meaning, the Court should not, on that basis, find an ambiguity. *Id.*; *Hunt, supra.*

For the reasons set forth below, COFIEC's claim that MHT purchased only the component of the unpaid interest on the Loans which accrued after July 31, 1990 "strains" the language of the Agreement beyond recognition and was properly rejected by both Judge Koeltl and the Second Circuit.

I.

THE DATE JULY 31, 1990 HAS NO SIGNIFICANCE WITH RESPECT TO THE ASSIGNMENT OF THE UNPAID INTEREST

COFIEC's claim that July 31, 1990 is the operative date for determining the allocation of interest is baseless. There is **nothing** in the text of the Agreement or Exhibit A to support this contention. Indeed, the date July 31, 1990 does not even appear in the Agreement itself. It appears only on Exhibit A and then only in sections describing the then current interest period and the rate of interest on each tranche of the debt which ranged from 9½% to 10.51%. (Exhibit A, Res. A. 10a-13a). There is no indication on that exhibit that the July date had any other significance or that it in any way limited COFIEC's blanket assignment of "ALL ACCRUED AND UNPAID INTEREST."

In the absence of any provision describing the July 31, 1990 date, COFIEC focuses on the form of the verb "accrue" in paragraph 5(a) of the Agreement. That paragraph, as noted above, provides in pertinent part:

> Each of the ASSIGNOR [COFIEC] and the ASSIGNEE [MHT] agrees that interest on the principal amounts of the Assigned Loans which accrues prior to the Effective Date [October 15, 1990] and interest thereon which accrues on or after the Effective Date shall *also* be for the account of ASSIGNEE and payments and prepayments of the principal amounts of the Assigned Loans payable on or after the effective

> date shall also be for the account of the ASSIGNEE (emphasis supplied).

COFIEC argues that, because the Agreement indicates that interest which accru*es* prior to October 15, 1990 was for MHT's account rather than interest which accru*ed* prior to that date, MHT purchased only the unpaid interest which was accruing in that quarter, *i.e.* interest from July 31, 1990. All other interest had already accrued.

This reading of the provision, which, as COFIEC admitted in the Second Circuit is a "subtle difference in the forms of the verb 'accrue'," is precisely the "strained interpretation" which the courts have routinely rejected. The difference in tense does not change the plain meaning of the words that interest **both** before and **also** after October 15, 1990 was for MHT's account.

Second, as Judge Koeltl explained, if as COFIEC alleges in its Complaint at paragraph 11, interest on the Obligations accrued quarterly, under COFIEC's strained interpretation, there would be no reason for the Agreement to reference interest prior to October 15, 1990 at all because interest for the July 31, 1990 - October 31, 1990 quarter would accrue on October 31, 1990 — after the Effective Date. (A. 11).

Finally, paragraph 5(a) says nothing about a split in interest payments and nothing about a July 31st date. The subtle difference in the tense of the word "accrue" does not somehow give rise to a July 31st date.

COFIEC's reliance on paragraph 5(b) of the Agreement is also misplaced and does not alter this analysis. This section of the Agreement describes in general terms the allocation

of future payments of principal and interest providing that, if either party receives a payment of principal or interest which belongs to the other (the amounts of any such payment in proportion to the parties' interests on the date of payment) the party must "promptly pay the same. . . ."

COFIEC argues that, under contract rules of construction, unless there was a split in interest, the phrase in the sentence in this paragraph that provides that MHT hold any monies in trust it receives for COFIEC's account will be rendered superfluous.

The short answer to COFIEC's claim is that, under New York law, the law that governs disputes under the Agreement (Agreement, ¶6, A. 8a), the court will not resort to the rules of construction where the contract is clear and unambiguous. *See In re Wallace*, 86 N.Y.2d 543, 658 N.E.2d 715, 634 N.Y.S.2d 669 (1995) (rules governing construction of ambiguous contracts are not triggered unless court first finds ambiguity). Here, the Agreement provides in clear and unequivocal terms, in capital letters, and underscored, that the debt was assigned with **all accrued and unpaid interest**. It says nothing about a split in interest. COFIEC's attempt to latch onto the July 31, 1990 date because it is that date that identifies the first day of the then interest period is grossly disingenuous.

Second, Paragraph 5(b) provides also that any payment of principal received by MHT which is for COFIEC's account should be held by MHT in trust. Under COFIEC's interpretation of the Agreement, therefore, there should be a split in principal payment. But that is clearly wrong. Exhibit A explicitly provides that COFIEC assigned 100% of the principal to MHT and COFIEC does not contend otherwise.

Accordingly, no part of any future principal payments would be for COFIEC's account. (*See* Exhibit A, A. 10a-13a). In the same vein, no part of any of the interest payments was for COFIEC's account. COFIEC's "interpretation" of Paragraph 5(b) is untenable.

Third, Paragraph 5(b), on its face, does not create new rights for COFIEC and does not alter the plain meaning of paragraph 5(a) which provides that COFIEC assigned all unpaid interest on the Obligations to MHT.

In the final analysis, while COFIEC attempts to attach significance to the form of the verb "accrue" used in the Agreement, and the provision describing the parties' responsibilities upon receipt of interest and principal payments, COFIEC itself tacitly acknowledges that, if the Agreement provided in simple language that "all interest is assigned to Chase," its claim could not be sustained. (Pet. 9.) This language, however, is virtually identical to the language used in Exhibit A to describe the assigned loans:

TOTAL AMOUNT ASSIGNED [$6,270,000]
PLUS ALL ACCRUED BUT UNPAID INTEREST

Even the tense of the verb "accrue" in this provision is "correct."

II.

THERE IS NO AMBIGUITY IN THE AGREEMENT

COFIEC's fall-back position, that the provisions in the Agreement with respect to the assignment of interest are "ambiguous," was properly rejected by Judge Koeltl and the Second Circuit.

Whether a contract is ambiguous is a question of law for the Court to decide. *Seiden Assoc., Inc. v. ANC Holdings, Inc.*, 959 F.2d 425, 429 (2d Cir. 1992). Ambiguous language is that which is

> capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined it in the context of the entire integrated agreement. . . .

Id. at 428 (citations omitted). The mere fact that the parties urge conflicting interpretations of the agreement does not make ambiguous otherwise plain language. Where the interpretation urged by one party "strains the contract language beyond its reasonable and ordinary meaning," the court may not, on that basis, find an ambiguity. *Metropolitan Life Ins. Co. v. RJR Nabisco, Inc.*, 906 F.2d 884, 889 (2d Cir. 1990).

Measured against these principles, it is clear that there is no ambiguity in the provisions governing the assignment of unpaid interest. As noted above, the text of the Agreement itself plainly indicates that all unpaid interest both before and after the Effective Date, October 15, 1990, was assigned to MHT. That assignment was confirmed in Exhibit A in language that could not be clearer.

> *TOTAL AMOUNT ASSIGNED [$6,270,000] PLUS ALL ACCRUED BUT UNPAID INTEREST ON THE FOREGOING PRINCIPAL*

Petitioner's contention that only interest which accrued after July 31, 1990 was assigned to MHT "strains the contract language beyond its reasonable and ordinary meaning."

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

AHUVA GENACK
Chase Manhattan Legal Department
Attorney for Respondent
One Chase Manhattan Plaza
26th Floor
New York, New York 10081
(212) 552-0918

APPENDIX

APPENDIX A — AFFIDAVIT OF ROBERT J. SALVADOR WITH EXHIBITS DATED SEPTEMBER 25, 1997

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

97 Civ. 5724 (JGK)

COMPANIA FINANCIERA ECUATORIANA DE DESAROLLO, S.A.,

Plaintiff,

–against–

THE CHASE MANHATTAN BANK, Successor-in-Interest to Manufacturers Hanover Trust Company,

Defendant.

AFFIDAVIT OF ROBERT J. SALVADOR

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT J. SALVADOR, being duly sworn, deposes and says as follows:

1. I am a Vice-President of The Chase Manhattan Bank ("Chase") in charge of Global Emerging Markets – Loan Operations. I make this affidavit to set before the Court the fully executed agreement between Compania Financiera

Appendix A

Ecuatoriana De Desarollo, S.A. ("COFIEC") and Chase dated October 15, 1990 (the "Agreement").

2. The contract annexed to the complaint in this matter is a draft. It is not signed by Manufacturers Hanover Trust Company, one of Chase's predecessors in-interest. Attached hereto as Exhibit A is a copy of the final, fully, executed Agreement.

s/ Robert J. Salvador
ROBERT J. SALVADOR
VICE PRESIDENT

Sworn to before me
September 25, 1997

s/ Ahuva Genack
Notary Public

[stamp]
AHUVA GENACK
Notary Public, State of New York
No. 02GE4947251
Qualified in New York County
Commission Expires Feb 21, 1999

Appendix A

EXHIBIT A

October 15th, 1990

Compania Financiera Ecuatoriana de Desarrollo S.A.
Avenidas Patria y Amazonas
Quito – Ecuador
Attn: Mr. Arturo Quiroz Martin

Re: ASSIGNMENT and AGREEMENT (the "*Agreement*"), dated as of October 15, 1990, between Manufacturers Hanover Trust Company (the "*ASSIGNEE*") and Compania Financiera Ecuatoriana de Desarrollo S.A. (the "*ASSIGNOR*")

Dear Martin:

This letter agreement (the "*Letter Agreement*") will confirm that the ASSIGNEE has agreed to effectuate the assignment provided for in the above-referenced agreement in accordance with the terms thereof effective on October 15, 1990 (the "*Effective Date*"). As consideration for such assignment, the ASSIGNEE will pay to the ASSIGNOR on or prior to the Effective Date the amount of U.S. $ 857,124.99 at Manufacturers Hanover Trust Company, 4 New York Plaza, New York, New York 10015, for account of COFIEC, account number 544-C-35206, attention: Mr. Arturo Quiroz Martin, reference: Ecuador Debt (US$ 6,270,000.00). The amounts will be payable in U.S. Dollars and in same day funds (or such other funds as may from time to time be customary for the settlement in New York of international banking transactions in U.S. Dollars).

Appendix A

If the foregoing is in accordance with your understanding, please indicate your agreement by signing and returning the enclosed copy of this Letter Agreement.

Very Truly Yours,

Manufacturers Hanover Trust Company

By s/ [illegible]
Title: Vice President

Agreed to and Accepted
this fifteenth day of October, 1990

Compania Financiera Ecuatoriana de Desarrollo S.A.

By s/ [illegible]
Title: President

Appendix A

ASSIGNMENT and AGREEMENT (the "*Agreement*"), dated as of October 15, 1990 between Manufacturers Hanover Trust Company (the "*ASSIGNEE*") and Compania Financiera Ecuatoriana de Desarrollo S.A. (the "*ASSIGNOR*").

The parties hereto hereby agree as follows:

1. *Assignment.* In accordance with the terms hereof and of a certain letter agreement (the "*Letter Agreement*"), dated the date hereof, from the ASSIGNOR to the ASSIGNEE, the ASSIGNOR hereby assigns and transfers to the ASSIGNEE without recourse all the ASSIGNOR's rights with respect to U.S. $ 6,270,000.00 in aggregate principal amount of the ASSIGNOR's loans (the "*Assigned Loans*") under each of the Agreements set forth in Exhibit A attached hereto. For the purposes of this assignment, the agreement(s) identified in Exhibit A, are referred to collectively as the "*Assigned Agreements*".

2. *Acceptance Assumption.* The ASSIGNEE hereby accepts the assignment and transfer to it by the ASSIGNOR of all the ASSIGNOR's rights and assumes all the ASSIGNOR's obligations with respect to the Assigned Loans and agrees, pursuant to the relevant sections in each of the Assigned Agreements, to be bound with respect to such Assigned Loans as fully and to the same extent as if the Assigned Loans were originally credits of the ASSIGNEE under the Assigned Agreements.

3. *Representations.* (a) Except as otherwise expressly provided herein, each of the parties shall not be deemed to have made, and hereby disclaims, any representations and

warranties whatsoever, either express or implied, including, without limitation, any representation or warranty as to:

(i) the due execution, legality, validity, adequacy or enforceability of any of the Assigned Agreements or any document relating thereto;

(ii) the accuracy or completeness of any documentation or information supplied by it in connection with the Assigned Agreements and the transactions contemplated herein;

(iii) the financial condition of the Obligor identified in Exhibit A hereto (the "*Obligor*"), or the Guarantor identified in Exhibit A hereto (the "*Guarantor*"), in relation to the Assigned Loans or the Assigned Agreements; or

(iv) the performance by the Obligor or Guarantor, of its respective obligations under the Assigned Agreements.

(b) The ASSIGNOR hereby represents and warrants that it has not heretofore, and prior to October 15, 1990 (the "*Effective Date*") will not have assigned, charged or pledged the whole or any part of its right, title and interest in and to any of the Assigned Loans nor has it agreed so to do.

(c) The ASSIGNEE represents that it has been, and will continue to be, solely responsible for making its own independent appraisal of, and investigations into, the financial condition, creditworthiness, affairs, status and nature of the Obligors and the Guarantor; and has not relied and will not hereafter rely on the ASSIGNOR to appraise or review on its behalf the financial condition, creditworthiness, affairs, status or nature of the Obligors and the Guarantor.

(d) Each of the ASSIGNOR and the ASSIGNEE represents and warrants to the other that it has the power to enter into this Agreement and to exercise its rights and perform its obligations hereunder and that all action required to authorize its execution of this Agreement and the performance of its obligations hereunder has been duly taken.

4. *Further Documentation.* Each of the ASSIGNOR and the ASSIGNEE shall execute and deliver the Joint Notice of Assignment and Agreement to be Bound, attached hereto as Exhibit B, [B-1, B-2, ETC. AS NECESSARY] and any such further documents or instruments as may be necessary or appropriate to implement the terms of this Agreement, including, without limitation, any such documents for the purpose of recording the assignment and transfer herein contained.

5. *Payment of Interest and Principal.* (a) Each of the ASSIGNOR and the ASSIGNEE agrees that interest on the principal amounts of the Assigned Loans which accrues prior to the Effective Date and interest thereon which accrues on or after the Effective Date shall also be for the account of the ASSIGNEE and payments and prepayments of the principal amounts of the Assigned Loans payable on or after the effective date shall be for the account of the ASSIGNEE.

(b) If either the ASSIGNOR or the ASSIGNEE receives any payment of interest or principal which is for the account of the other (the amounts of any such payment of interest or principal which are for the accounts of parties being determined, in the case of a payment of interest, in proportion to the interest accrued to each of the parties at the date of

payment and, in the case of a payment of principal, in proportion to the principal owed to the parties at the date of payment) then the ASSIGNOR or the ASSIGNEE, as the case may be, shall hold the same in trust for the other and shall promptly pay the same to the other.

6. *Law.* This Agreement shall be governed by, and construed and interpreted in accordance with, the law of the State of New York, United States of America.

7. *Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

8. *Severability.* If any provision hereof shall be held to be void, illegal or unenforceable, it shall be deemed severable from the remaining provisions hereof which shall remain in full force and affect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officials, officers or agents thereunto duly authorized as of the date first above written.

Appendix A

Manufacturers Hanover Trust Company

by: s/ [illegible]
Title: Vice President

Address: 270 Park Avenue
New York, New York 10017
Attn: Robert J. Salvador
Vice President

Compania Financiera Ecuatoriana de
Desarrollo S.A.

By: s/ [illegible]
Title: President

Address: Avenidas Patria y Amazonas
Quito – Ecuador
Attn: Mr. Arturo Quiroz Martin

Appendix A

EXHIBIT A

TO ASSIGNMENT AND AGREEMENT DATED OCTOBER 15, 1990 BETWEEN ASSIGNEE AND ASSIGNOR

AGGREGATE TOTAL AMOUNT: U.S. $ 2,709,653.27

OBLIGOR: Banco Central del Ecuador

GUARANTOR: The Republic of Ecuador

AGREEMENT: Banco Central del Ecuador DFLA Consolidation Agreement dated August 15, 1986

SERVICING BANK: Citibank N.A.

The Assigned Loan (Tranche 1) identified as follows:

	U.S. Dollar Outstanding Principal Amount	U.S. Dollar Principal Amount of Credit to be Assigned
Tranche 1	2,709,653.27	2,709.653.27

TOTAL AMOUNT ASSIGNED $ 2,709,653.27 PLUS ALL ACCRUED BUT UNPAID INTEREST ON THE FOREGOING PRINCIPAL

INTEREST PERIOD: July 31, 1990 TO October 31, 1990

INTEREST RATE: LIBOR= 8-1/8% + MARGIN= 1-3/8%= ALL IN 9-1/2%

Appendix A

EXHIBIT A (continued)

TO ASSIGNMENT AND AGREEMENT DATED OCTOBER 15, 1990 BETWEEN ASSIGNEE AND ASSIGNOR

AGGREGATE TOTAL AMOUNT: U.S. $ 290,346.73

OBLIGOR: Banco Central del Ecuador

GUARANTOR: The Republic of Ecuador

AGREEMENT: Banco Central del Ecuador DFLA Consolidation Agreement dated August 15, 1986

SERVICING BANK: Citibank N.A.

The Assigned Loan (Tranche 2) identified as follows:

	U.S. Dollar Outstanding Principal Amount	U.S. Dollar Principal Amount of Credit to be Assigned
Tranche 2	290,346.73	290,346.73

TOTAL AMOUNT ASSIGNED $ 290,346.73 PLUS ALL ACCRUED BUT UNPAID INTEREST ON THE FOREGOING PRINCIPAL

INTEREST PERIOD: July 31, 1990 TO October 31, 1990

INTEREST RATE: LIBOR= 8-1/8% + MARGIN= 1-3/8%= ALL IN 9-1/2%

Appendix A

EXHIBIT A (continued)

TO ASSIGNMENT AND AGREEMENT DATED OCTOBER 15, 1990 BETWEEN ASSIGNEE AND ASSIGNOR

AGGREGATE TOTAL AMOUNT: U.S. $ 1,270,000.00

OBLIGOR: Banco Central del Ecuador

GUARANTOR: The Republic of Ecuador

AGREEMENT: Banco Central del Ecuador DFLA Consolidation Agreement dated August 15, 1986

SERVICING BANK: Citibank N.A.

The Assigned Loan (Tranche 4) identified as follows:

	U.S. Dollar Outstanding Principal Amount	U.S. Dollar Principal Amount of Credit to be Assigned
Tranche 4	1,270,000.00	1,270,000.00

TOTAL AMOUNT ASSIGNED $ 1,270,000.00 PLUS ALL ACCRUED BUT UNPAID INTEREST ON THE FOREGOING PRINCIPAL

INTEREST PERIOD: July 31, 1990 TO October 31, 1990

INTEREST RATE: LIBOR= 8-1/8% + MARGIN= 2-1/4%= ALL IN 10-3/8%

Appendix A

EXHIBIT A (continued)

TO ASSIGNMENT AND AGREEMENT DATED OCTOBER 15, 1990 BETWEEN ASSIGNEE AND ASSIGNOR

AGGREGATE TOTAL AMOUNT: U.S. $ 2,000,000.00

OBLIGOR: Banco Central del Ecuador

GUARANTOR: The Republic of Ecuador

AGREEMENT: Banco Central del Ecuador DFLA Consolidation Agreement dated August 15, 1986

SERVICING BANK: Citibank N.A.

The Assigned Loan (Tranche 5) identified as follows:

	U.S. Dollar Outstanding Principal Amount	U.S. Dollar Principal Amount of Credit to be Assigned
Tranche 5	2,000,000.00	2,000,000.00

TOTAL AMOUNT ASSIGNED $2,000,000.00 PLUS ALL ACCRUED BUT UNPAID INTEREST ON THE FOREGOING PRINCIPAL

INTEREST PERIOD: July 31, 1990 TO October 31, 1990

INTEREST RATE: US DOMESTIC= 8.26%+MARGIN= 2-1/4%=ALL IN 10.51%